UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9

IN THE MATTER OF:	)	
	)	
Tucson Iron and Metal	)	**FINDING AND NOTICE**
	)	**OF VIOLATION**
Tucson, Arizona	)	
	)	**R9-CAA-2021-1009**
Proceedings Pursuant to	)	
Section 113(a)(3) of the	)	
Clean Air Act, 42 U.S.C.	)	
§ 7413(a)(3)	)	

FINDING AND NOTICE OF VIOLATION

This Finding and Notice of Violation ("NOV") is issued pursuant to Section 113(a) of the Clean Air Act 42 U.S.C. § 7401-7671q ("CAA" or "the Act"). Per Section 113(a)(3) of the CAA, the Administrator of the United States Environmental Protection Agency ("EPA") may notify any person in violation of a standard of performance for new stationary sources ("New Source Performance Standards" or "NSPS") promulgated under Section 111 of the CAA of the violations. This NOV is issued to Tucson Iron and Metal ("TIM") for violations of the CAA at its facility located in Tucson, Arizona. Specifically, this NOV alleges violations of the NSPS General Provisions (40 C.F.R. Part 60, Subpart A) and the NSPS Standards of Performance for Other Solid Waste Incineration ("OSWI") Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006 (40 C.F.R. Part 60, Subpart EEEE). The authority to issue NOVs has been delegated to the Regional Administrator of EPA, Region 9, and re-delegated to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 9.

STATUTORY AND REGULATORY BACKGROUND

Statutory Provisions

1. Section 302(e) of the CAA provides that whenever the term "person" is used in the Act, the term includes "an individual, corporation, partnership, association, state, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof."

2. Section 101 of the CAA lists the purposes of the Act including, among others, to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population.

3. Section 111 of the Act requires the EPA Administrator to set emission limits, known as "standards of performance," for several categories of air pollution sources. *See* 42 U.S.C. § 7411(a) and (b). It also permits the Administrator to promulgate design, equipment, work practice or operational standards, or a combination thereof, in lieu of emission limits. *Id.*

§ 7411(h)(1). The Act provides that after the effective date of any emission limit or other standard promulgated pursuant to Section 111, it shall be unlawful for any owner or operator of a new source to operate that source in violation of the emission limit or standard. *Id.* §§ 7411(e) and 7411(h)(5).

4. A "new source" is "any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source." 42 U.S.C. § 7411(a)(2).

5. Section 114 of the CAA authorizes the EPA Administrator to require testing, monitoring, recordkeeping, and reporting of information, to enable him or her to carry out any provision of the Act (except certain provisions in subchapter II) and to assess compliance with, among other requirements, any regulations promulgated under Section 111 of the Act.

NSPS General Provisions

6. Pursuant to Section 111 of the CAA, EPA promulgated the "Standards of Performance for New Stationary Sources," 40 C.F.R. Part 60, Subpart A, 40 C.F.R. §§ 60.1 – 60.19, otherwise known as the NSPS General Provisions.

7. 40 C.F.R. § 60.1 provides that, with exceptions provided in 40 C.F.R. Part 60, Subparts B and C, the NSPS General Provisions apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication of any Part 60 standard (or, if earlier, the date of the publication of any proposed standard) applicable to the facility.

8. 40 C.F.R. § 60.2 defines "affected facility," with reference to a stationary source, as any apparatus to which a standard is applicable.

9. 40 C.F.R. § 60.2 defines "owner or operator" as any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is part.

10. 40 C.F.R. § 60.2 defines "stationary source" as any building, structure, facility, or installation which emits or may emit any air pollutant.

11. 40 C.F.R. § 60.11(d) provides that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

NSPS for Other Solid Waste Incineration Units

12. On December 16, 2005, under the authority of Section 111(b) of the Act, EPA promulgated "New Source Performance Standards for Standards of Performance for Other Solid Waste Incineration ("OSWI") Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," 40 C.F.R.

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Part 60, Subpart EEEE, § 60.2880 *et seq*., otherwise known as "OSWI NSPS." *See* 70 Fed. Reg. 74892 (December 16, 2005) as amended at 71 Fed. Reg. 67806 (November 24, 2006).

13. The OSWI NSPS applies to new incineration units as defined in 40 C.F.R. § 60.2886 and OSWI units as defined in 40 C.F.R. § 60.2977. 40 C.F.R. § 60.2885.

14. 40 C.F.R. § 60.2886 defines a "new incineration unit" as an incineration unit that commenced construction after December 9, 2004 or commenced reconstruction or modification on or after June 16, 2006.

15. 40 C.F.R. § 60.2977 defines "OSWI unit" as either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in the OSWI NSPS. Unit types listed in 40 C.F.R. § 60.2887 as being excluded from the OSWI NSPS are not OSWI units. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas: (1) the combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

16. 40 C.F.R. § 60.2977 defines "very small municipal waste combustion unit" as any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in 40 C.F.R. § 60.2975.

17. 40 C.F.R. § 60.2915 requires an owner or operator to meet the emision limitations specified in Table 1 of the OSWI NSPS 60 days after the OSWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

18. Table 1 to the OSWI NSPS requires an owner or operator to comply with the following emission limitations: 40 parts per million by dry volume ("ppmdv") carbon monoxide ("CO"); 33 nanograms per dry standard cubic meter ("ng/dscm") dioxins/furans (total basis); and 3.1 ppmdv sulfur dioxide ("SO_2"). 40 C.F.R. § 60.2915.

19. 40 C.F.R. § 60.2917 provides that if an owner or operator uses an air pollution control device other than a wet scrubber or limits emissions in some other manner to comply with the emission limitations under 40 C.F.R. § 60.2915, the owner or operator must petition EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. The owner or operator must not conduct the initial performance test until after the petition has been approved by EPA. The petition must include the (a) identification of the specific parameters proposed to be used as operating limits; (b) a discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants; (c) a

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discussion of how the upper and/or lower values for these parameters that will establish the operating limits on these parameters will be determined; (d) a discussion identifying the methods that will be used to measure and the instruments used to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments; and (e) a discussion identifying the frequency and methods for recalibrating the instruments used for monitoring these parameters.

20. 40 C.F.R. § 60.2927 requires owners or operators to conduct an initial performance test, as required under 40 C.F.R. § 60.8, to determine compliance with the emission limitations in Table 1 of the OSWI NSPS and to establish operating limits using the procedure in 40 C.F.R. §§ 60.2916 or § 60.2917. The initial performance test must be conducted using the test methods listed in Table 1 of the OSWI NSPS and the procedures in 40 C.F.R. § 60.2922.

21. 40 C.F.R. 60.2923 requires the results of performance tests to be used to demonstrate compliance with the emission limitations in Table 1 of the OSWI NSPS.

22. 40 C.F.R. § 60.2939 requires owners or operators to install, calibrate, maintain, and operate continuous emission monitoring systems ("CEMS") for CO and for oxygen ("O_2"). Owners or operators must monitor the O_2 concentration at each location where CO is monitored. Owners or operators must install, evaluate, and operate each CEMS according to the "Monitoring Requirements" in 40 C.F.R. § 60.13.

23. 40 C.F.R. § 60.2940 requires owners or operators to insure that the CEMS are operating properly by: (a) conducting initial, daily, quarterly, and annual evaluations of continuous emission monitoring systems that measure CO and O_2; (b) completing initial evaluation of the CEMS within 60 days after the OSWI unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup; (c) for initial and annual evaluations, collecting data concurrently (or within 30 to 60 minutes) using the CO and O_2 CEMS. To validate CO concentration levels, owners or operators must use EPA Method 10, 10A, or 10B of Appendix A of 40 C.F.R. Part 60. Use EPA Method 3 or 3A to measure O_2. Collect the data during each initial and annual evaluation of the CEMS following the applicable performance specifications in Appendix B of 40 C.F.R. Part 60. Table 3 of the OSWI NSPS shows the required span values and performance specifications that apply to each CEMS; (d) Follow the quality assurance procedures in Procedure 1 of Appendix F of 40 C.F.R. Part 60 for each CEMS. The procedures include daily calibration drift and quarterly accuracy determinations.

24. The Quality Assurance Procedures in Appendix F of 40 C.F.R. Part 60, Procedure 1, Section 5.1.1 require an owner or operator to conduct a Relative Accuracy Test Audit ("RATA") once every four calendar quarters, except as otherwise noted in section 5.1.4 of Appendix F. Conduct the RATA as described for the relative accuracy ("RA") test procedure in the applicable performance specification ("PS") in Appendix B (e.g., PS 3 for O_2 and PS 4 or 4A for CO). In addition, the owner or operator must analyze the appropriate performance audit samples received from EPA as described in the applicable sampling methods (e.g., Methods 3/3A and 10/10A/10B).

25. The Quality Assurance Procedures in Appendix F of 40 C.F.R. Part 60, Procedure 1, Section 5.2 provides that if the relative accuracy, using the RATA, cylinder gas audit ("CGA"), or relative accuracy audit ("RAA") exceeds the criteria in section 5.2.3, the CEMS is out-of-control ("OOC"). If the CEMS is OOC, the owner or operator must take necessary corrective action to eliminate the problem. Following corrective action, the owner or operator must audit the CEMS with a RATA, CGA, or RAA to determine if the CEMS is operating within the specifications. A RATA must always be used following an OOC period resulting from a RATA. If audit results show the CEMS to be OOC, the CEMS operator shall report both the audit showing the CEMS to be OOC and the results of the audit following corrective action showing the CEMS to be operating within specifications.

26. The Quality Assurance Procedures in Appendix F of 40 C.F.R. Part 60, Procedure 1, Section 5.2.2 provide that during the period the monitor is OOC, the CEMS data may not be used in calculating emission compliance nor be counted towards meeting minimum data availability as required and described in the OSWI NSPS.

27. Table 3 of the OSWI NSPS provides the requirements for CEMS, as stated in 40 C.F.R. § 60.2940. CEMS for CO must use PS 4 or 4A in Appendix B of 40 C.F.R. Part 60 to conduct data quality audits on the CEMS. PS 4A, Section 13.2, requires that the Relative Accuracy of the CO CEMS must be no greater than 10 percent when the average reference method value is used to calculate the Relative Accuracy.

28. 40 C.F.R. § 60.2942(c) provides that owners or operators must obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter with CEMS. An operating day is any day the unit combusts any municipal or institutional solid waste.

29. 40 C.F.R. § 60.2942(f) provides that if CEMS are temporarily unavailable to meet the data collection requirements, owners or operators must use the alternate methods of data collection in Table 3 of the OSWI NSPS.

FINDINGS OF FACT

Background

30. TIM owns and operates a scrap metals–processing/recycling facility at 4484 East Tennessee Street in Tucson, Arizona (the "Facility").

31. TIM is a "person" within the meaning of the Act. 42 U.S.C. § 7602(e).

32. In approximately March 2006, TIM removed the existing incineration unit at the Facility. TIM subsequently constructed a rotary incineration unit that is currently in operation. The rotary incineration unit is a new very small municipal waste combustion unit as defined by the OSWI NSPS and is subject to the requirements of the OSWI NSPS because the construction of the OSWI unit commenced after December 9, 2004.

33. The OSWI unit incinerates contraband supplied to TIM by the United States Customs and Border Patrol and other law enforcement agencies.

34. On September 10, 2015, TIM petitioned the EPA for use of an air pollution control device other than a wet scrubber, and proposed specific parameters to use as operating limits ("OPLs") for the OSWI unit to comply with the emission limits in 40 C.F.R. § 60.2915.

35. On September 27, 2016, EPA conditionally approved the use of a dry sorbent scrubber in lieu of a wet gas scrubber and the following OPLs for the TIM OSWI unit and dry sorbent scrubber:

a. OPL #1 – a maximum feed rate to the OSWI unit of 2,030 pounds per hour of contraband and associated packaging;
b. OPL #2 – maintaining a minimum temperature of 1,400 degrees Fahrenheit ("°F") for the secondary combustion chamber afterburner;
c. OPL #3 – monitoring and recording the sorbent feed in 15 to 20-minute increments to provide the hourly sorbent feed rate for abatement as well as maintaining a minimum sorbent injection rate of 30 pounds per hour; and
d. OPL #4 - continuous measurement and recording of CO and O_2 using a commissioned CEMS.

Emissions

36. On February 7-9, 2017, TIM conducted initial performance testing to demonstrate compliance with the OPLs.

37. The SO_2 emision results from the initial performance testing were 42.4 ppmvd, which exceeded the OSWI NSPS SO_2 emission limit of 3.1 ppmvd.

38. On June 5, 2017, TIM subsequently completed the initial performance tests demonstrating compliance with the OPLs and OSWI NSPS emission limits for SO_2.

39. On September 9 - 10, 2020, TIM conducted performance tests on the OSWI unit. The dioxins/furans emission results from this testing were 1194 ng/dscm (total basis), which exceeded the OSWI NSPS emission limit of 33 ng/dscm (total basis).

40. On November 24, 2020, TIM conducted performance tests for dioxins/furans again on the OSWI unit. The dioxins/furans emission results from this testing were 251 ng/dscm (total basis), which exceeded the OSWI NSPS emission limit of 33 ng/dscm (total basis).

41. On March 16, 2021, TIM conducted a dioxins/furans performance test of the OSWI unit. The dioxins/furans emission results from this testing were 59 ng/dscm, which exceeded the OSWI NSPS emission limit of 33 ng/dscm (total basis).

42. On February 1, 2021, TIM submitted its OSWI NSPS semiannual report for the period of July 1, 2020 through December 31, 2020. During incineration events for the period from September 16,

2020[1] through December 9, 2020, TIM reported data showing 30 exceedances of the 12-hour rolling CO emission limit of 40 ppmvd.

43. For the period from September 16, 2020 through December 18, 2020, TIM conducted 12 incineration events totaling approximately 43 hours of emissions.

CEMS

44. On April 23, 2019, TIM conducted a RATA of the OSWI unit CEMS. TIM failed the RATA and the results showed a Relative Accuracy of 102.4 percent for the CO CEMS. The OSWI NSPS limits the Relative Accuracy to no greater than 10 percent when the average Reference Method is used to calculate the Relative Accuracy.

45. After April 23, 2019 failed RATA, the CO CEMS was OOC.

46. In December 2019, TIM replaced its existing CO CEMS with a new CEMS. TIM did not pass a RATA on this new CEMS until September 10, 2020.

47. TIM did not have any valid CEMS data from April 23, 2019 to September 10, 2020 and did not use the alternate methods specified in Table 3 of the OSWI NSPS to meet the minimum data requirements in the absence of valid CEMS data.

OPLs

48. On December 11, 2019, an inspector from the Pima County Department of Environmental Quality ("Pima County DEQ") conducted an inspection of the TIM Facility during an incineration event. The Pima County DEQ inspector observed that the sorbent injection system was not in operation during the incineration event. The inspector notified Facility personnel of this observation. The Pima County DEQ inspector further noted in his inspection report (PC1912-048) that Facility personnel took no corrective action concerning the sorbent injection system.

49. During the December 11, 2019 inspection, the Pima County DEQ inspector noted periods during the incineration event when the secondary combustion chamber afterburner operated below 1,400°F.

50. In its February 1, 2021 OSWI NSPS semi-annual report, TIM noted various instances that the afterburner was not operating at 1,400°F during incineration events including the following instances: 1) August 21, 2020 - afterburner interlock turned off; 2) November 3, 2020 - afterburner outage; and 3) November 13, 2020, December 1, 2020, and December 18, 2020 - afterburner temperature at 1,200°F.

[1] TIM did not have valid CEMS data for the July 2020 - December 2020 reporting period prior to September 16, 2020.

General

51. During the December 11, 2019 inspection, the Pima County DEQ inspector observed a plume emitted from the front opening of the furnace barrel of the OSWI unit.

52. On a June 3, 2020 inspection, a Pima County DEQ inspector observed emissions in the form of black and white smoke from the front of the OSWI unit while an incineration event was in progress.

53. During the December 11, 2019 inspection, Facility personnel notified the Pima County DEQ inspector that there were several locations where the equipment experienced storm damage.

54. During the June 3, 2020 inspection, the Pima County DEQ inspector observed multiple cracks on the exhaust train of the OSWI unit.

55. On December 11, 2020, under the authority of Section 114 of the Act, the EPA issued an information request letter to TIM. TIM provided responses on January 5, 2021 and February 22, 2021.

56. The results of the performance tests and CEMS data are evidence that the Facility continues to exceed the emission limits of dioxins/furans and CO each time it has an incineration event. The EPA is not aware of any changes that TIM has made that would bring the Facility's emissions below the emission limits.

ENVIRONMENTAL AND HEALTH IMPACTS

57. TIM's operation of the Facility is resulting in excess emissions of dioxins/furans and CO.

58. Dioxins/furans can enter the body through breathing contaminated air, drinking contaminated water or eating contaminated food. Dioxins/furans can build up in the fatty tissues of animals.

59. Dioxins/furans are toxic and can cause a number of adverse health effects. The most well-known member of the dioxins/furans family is 2,3,7,8 TCDD. The EPA has determined that it is likely to be a cancer-causing substance to humans. In addition, people exposed to dioxins/furans have experienced changes in hormone levels. High doses of dioxin have caused a skin disease called chloracne. Animal studies show that animals exposed to dioxins/furans experienced changes in their hormone systems, changes in the development of the fetus, decreased ability to reproduce and suppressed immune system.

60. CO is a colorless, odorless gas that can be harmful when inhaled in large amounts. CO is released when something containing carbon is burned.

61. Breathing air with a high concentration of CO reduces the amount of oxygen that can be transported in the blood stream to critical organs like the heart and brain. At very high levels, which are possible indoors or in other enclosed environments, CO can cause dizziness, confusion, unconsciousness and death.

FINDINGS OF VIOLATION

62. TIM exceeded the dioxins/furans emission limit as demonstrated by the September 9-10, 2020, November 24, 2020, and March 16, 2021 performance tests. TIM violated the dioxins/furans emission limit in Table 1 of the OSWI NSPS and 40 C.F.R. § 60.2915 on these occasions. Because TIM has not demonstrated compliance with a subsequent stack test, TIM also violated the OSWI NSPS emission limit for dioxins/furans on September 16, 2020, September 23, 2020, September 25, 2020, October 27, 2020, November 3, 2020, November 10, 2020, November 13, 2020, November 17, 2020, November 24, 2020, December 1, 2020, December 9, 2020, and December 18, 2020 and continues to violate the OSWI NSPS emission limit for dioxins/furans each time it has an incineration event.

63. TIM exceeded the CO 12-hour rolling average emission limit on 30 occasions during seven incineration events between September 16, 2020 and December 31, 2020. TIM violated the CO emission limit in Table 1 of the OSWI NSPS and 40 C.F.R. § 60.2915 on these occasions and continues to violate the OSWI NSPS emission limit for CO each time it has an incineration event.

64. TIM exceeded the SO_2 emission limit as shown by the February 7-9, 2017 initial performance test, in violation of the SO_2 emission limit in Table 1 of the OSWI NSPS and 40 C.F.R. § 60.2915.

65. TIM failed to collect valid CEMS data from April 23, 2019 to September 10, 2020, in violation of 40 C.F.R. § 60.2942(d).

66. TIM failed to use alternate methods of data collection from April 23, 2019 to September 10, 2020, in violation of 40 C.F.R. § 60.2942(f).

67. TIM failed to properly maintain the CEMS from April 23, 2019 to September 10, 2020 when the CEMS were OOC, in violation of 40 C.F.R. § 60.2939.

68. TIM failed to meet the EPA-approved OPL #4 from April 23, 2019 to September 10, 2020 when the CEMS were OOC, in violation of 40 C.F.R. § 60.2917.

69. TIM failed to meet the EPA-approved OPL #3 on December 11, 2019 when it did not operate the sorbent injection system, in violation of 40 C.F.R. § 60.2917.

70. TIM failed to meet the EPA-approved OPL #2 during various incineration events, including on December 11, 2019, August 21, 2020, November 3, 2020, November 13, 2020, December 1, 2020, and December 18, 2020, when it did not continuously operate the secondary combustion chamber afterburner at or above 1,400°F, in violation of 40 C.F.R. § 60.2917.

71. TIM failed to operate the OSWI unit and its associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions by allowing emissions from the front opening of the OSWI unit during incineration events on December 11, 2019 and June 3, 2020, in violation of 40 C.F.R. § 60.11(d).

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72. TIM failed to operate and continues to fail to operate the OSWI unit and its associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions by not properly repairing storm and other related damage to the OSWI unit exhaust train, in violation of 40 C.F.R. § 60.11(d).

NOTICE OF VIOLATION

73. Notice is given to TIM that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that TIM has violated Section 111 of the Act, 40 C.F.R. Part 60, Subpart A, and 40 C.F.R. Part 60, Subpart EEEE, as set forth in the Finding of Violation.

ENFORCEMENT

74. Section 113(a)(3) of the Act provides that when any person has violated any requirement or prohibition of title I of the Act (including CAA § 111), EPA may:

- issue an order requiring compliance with the requirement or prohibition;
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to $48,762 per day of violation; or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than $102,638 per day for each violation.

42 U.S.C. § 7413(a)(3); 40 C.F.R. Part 19; 85 Fed. Reg. 83820 (December 23, 2020).

Furthermore, if a person knowingly violates any requirement or prohibition of Section 111(e) of the Act (relating to new source performance standards), Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. 42 U.S.C. § 7413(c). Under Section 306(a) of the Act (42 U.S.C. § 7606(a)), the regulations promulgated thereunder (2 C.F.R. Part 1532), and Executive Order 11738, persons convicted of an offense under section 113(c) of the Act are disqualified from receiving federal contracts, grants, and loans.

PENALTY ASSESSMENT CRITERIA

75. Section 113(e)(1) of the Act states that, in determining the amount of any penalty to be assessed, the Administrator will take into consideration (in addition to such other factors as justice may require) the size of the violator, the economic impact of the penalty on the violator, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator for penalties previously assessed for the same violation, the economic benefit of non-compliance, and the seriousness of the violation.

76. Section 113(e)(2) of the Act allows the Administrator to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to this violation likely to have

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continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

77. TIM may, upon request, confer with EPA. The conference will enable TIM to present evidence bearing upon the Finding and Notice of Violation, on the nature of the violations, and on any efforts TIM has taken or may have taken or proposes to take to achieve compliance. TIM has the right to be represented by counsel. A request for conference with EPA must be made within ten (10) working days from receipt of this NOV, and the request for a conference or other inquiries concerning this NOV should be made in writing to Mark Sims of the Enforcement and Compliance Assurance Division at (415) 972-3965 or sims.mark@epa.gov, or have your attorney contact Denise Leong of the Office of Regional Counsel at (415) 972-3409 or leong.denise@epa.gov.

4/15/2021

Date

AMY MILLER-BOWEN

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Date: 2021.04.15 16:55:06 -07'00'

Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 9